

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1114 of 1998

-----  
STATE OF GUJARAT

Versus

RAMESHBHAI BHEMABHAI SODHAPARMAR  
-----

Appearance:

MR DN PATEL ADDL PUBLIC PROSECUTOR for Appellant

MR HM PRACHCHHAK for Respondent No. 2, 3  
-----

CORAM : MR.JUSTICE C.K.BUCH

Date of Order: 08/09/1999

ORAL ORDER

#. The State has preferred the present appeal for enhancement of the sentences and the amount of fine imposed by the learned Additional Sessions Judge of Kheda at Nadiad in Special Case No : 95/1997. The respondents accused were tried by Special Court for the offences punishable under Section 323, 504, 506(2), 114 and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the case of the prosecution, on 11st April, 1997 at about 10.40 P.M., the accused persons had assaulted the victim and the victim was insulted in filthy language. One of them also uttered the words abusing the scheduled caste people.

" (words quoted in vernacular language-Gujarati)

"

#. After the incident, the complaint was lodged before the concerned police station and as investigating agency found that the accused can be tried by criminal court as they have committed the above referred offences and consequently, they were chargesheeted and tried by the learned Sessions Court at Nadiad. According to the case

of the prosecution, accused Dabhai Motibhai Parmar had assaulted on lady PW Paniben Ramabhai with stick on her right hand and she had sustained injury. After considering the oral as well as documentary evidence including the medical certificate, the learned Sessions Judge held all these 3 accused guilty for the offence punishable under Section 504, 506(2), 114 and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The respondents Rameshbhai Bhembhai and Dabhaibhai Motibhai and respondent No : 3 Amarsingh were also held guilty for the offence punishable under Section 323 of IPC for assaulting prosecution witnesses. It is also observed that this Amarsingh had also inflicted kick blow to prosecution witness Pushapaben. Considering all these documentary evidence, the learned Additional Sessions Judge convicted all the respondents - accused and sentenced them to undergo imprisonment till rising of the court and each of them were further ordered to pay the fine of Rs.1000/- along with above TRC. As the respondents were given benefit of doubt for the offences allegedly committed under Section 504, 506(2), 114 and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, no separate order of punishment was required to be passed.

#. The grievance of the State is that the accused persons ought to have been held guilty of the offence punishable under Section 504, 506(2) and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as the sentence awarded under Section 323 of IPC is inadequate and the same should be enhanced.

#. The learned Additional Sessions Judge while appreciating the evidence has reached to the correct conclusion about the inadequacy of the evidence so far alleged offences punishable under Section 504, 506(2) and the offence punishable under Section 3(1)(10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities ) Act, 1989. It it further observed that it was sudden quarrel. The evidence of Dr.Dilipbhai Trambaklal Bhojai has rightly appreciated in light of other evidence of PW Girishkumar Ratilal. The version of the injured witnesses gets corroboration from these two independent witnesses and the say of the injured witnesses is rightly accepted though the acceptance is partial. So far as the offence punishable under Section 323 is concerned, there were no grievous hurt to any of the witnesses. Legality and the validity of the order of acquittal recorded has not been challenged by the

appellant. The learned counsel for the respondent (original accused) states that the accused persons have not preferred any appeal but according him to the finding of the learned Judge giving benefit of doubt and other reasons given are absolutely legal and in accordance with law and therefore, the same should be upheld. The learned APP Mr.D.N.Patel has taken me through the prosecution case and nature of evidence led and this Court feels that the act of assaulting on the members at night time on public place like village bus stop is an act which could be condemned. But looking to the totality of the circumstances available on record, infliction of punishment with fine is sufficient. This is the case wherein, the learned Additional Sessions Judge even could have granted benefit under Probation of Offender Act but as the two prosecution witnesses and lady members, had sustained injuries in the incident, the Court has rightly imposed imprisonment till rising of the Court with fine. Looking to the economic background of the respondent accused, the fine of Rs.1000/- to each of the accused can be said to be heavy fine so that the prayer to enhance the punishment advanced by the State should not be accepted. In some cases, if the unreasonable punishment if imposed then, that would lead to permanent vengeance between the parties. Therefore, this Court is not inclined to enhance the quantum of punishment imposed by the learned Additional Sessions Judge considering the fact that the order inflicting the punishment is reasoned order and the same is in consonance with the nature of offence committed by them. Partial acceptance of prosecution case should have some bearing on the quantum of punishment on some occasions, it tilts the balance.

#. This Court is in total agreement that the court while hearing such appeal or revision, can reappraised the entire set of evidence but at the end change in the amount of fine to limited extent or increase in imprisonment by a day or two, would not change the effect of the order and such interference normally should not be made unless it is amply required or warranted. In the instant case, this Court don't find any need to add or alter the quantum of punishment imposed by the learned Additional Sessions Judge and as a result, the appeal filed by the State requires to be dismissed and the same is dismissed accordingly.

Date : 8-9-1999 [C.K.Buch, J.]

#kailash#

